BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of Lafayette to Approve a Fourth Amendment to the Development Agreement dated June 1, 1998 between the City of Lafayette, Constantine and Jeanie Christopoulos, Lafayette Residential Partners, LLC, and Bay Glen Limited Partnership	)	Ordinance No. 574

WHEREAS, the City of Lafayette ("City") and Constantine Christopoulos and Jeanie Christopoulos, husband and wife as successors in interest to Lafayette Town Center Associates, Lafayette Residential Partners, LLC, a Delaware limited liability company as successor in interest to Lafayette Town Center Associates, and Bay Glen Limited Partnership, a California limited partnership as successor in interest to Lafayette Town Center Associates (collectively, "Developer") entered into that certain Development Agreement dated June 1, 1998 and effective as of May 27, 1998 ("Development Agreement");

WHEREAS, the Development Agreement provides for the development of certain property in the City as a mixed-used development comprised of three phased components, retail, apartment, and office;

WHEREAS, the Development Agreement was set to expire within seven years after the effective date of the Development Agreement;

WHEREAS, the parties entered into a First Amendment to the Development Agreement dated September 13, 2004 to extend the term by one (1) year and extending the development timing for the office component by one (1) year;

WHEREAS, Lafayette Residential Partners, LLC ("LRP") and the City participated in a mediation of certain disputes arising from and related to the Development Agreement and the City Council's decision on October 11, 2005 to deny the consent to transfer the Development Agreement and office component development site from LRP to KB Home. LRP and the City entered into a Settlement Agreement dated May 22, 2006, restated and amended on February 25, 2008 to settle and resolve all of the differences and disputes;

WHEREAS, the parties entered into a Second Amendment Agreement dated May 26, 2006 to extend the term by one (1) year and extend the development timing for the office component by one (1) year;

WHEREAS, the partied entered into a Third Amendment Agreement dated April 23, 2007 to extend the term by one (1) year and extend the development timing for the office component by one (1) year.

WHEREAS, the parties desire to further amend the Development Agreement to further extend the term by two (2) years and allow either an office use as originally contemplated or a residential use for Phase III;

WHEREAS, on March 20, 2008, the Planning Commission of the City of Lafayette conducted a public hearing pursuant to Government Code Section 65867 et seq. at which hearing all persons wishing to testify in connection with the proposed amendment to the Development Agreement were heard and at which the Fourth Amendment to Development Agreement was comprehensively reviewed; and

WHEREAS, on April 14, 2008, the City Council of the City of Lafayette conducted a public hearing pursuant to Government Code Section 65867 et seq. at which hearing all persons wishing to testify in connection with the proposed Fourth Amendment to the Development Agreement were heard and at which the Fourth Amendment to the Development Agreement was comprehensively reviewed.

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. Adoption of Amendment. Pursuant to California Government Code Section 65868 the City Council hereby approves the Fourth Amendment to the Development Agreement attached hereto as Exhibit "A" ("Fourth Amendment").

Section 2. Findings. Pursuant to California Government Code Section 65867.5 and based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council hereby makes and adopts the following findings:

A. That the Fourth Amendment promotes the public health, safety and welfare of the community because the Fourth Amendment will allow the Developer to complete a project that will benefit the entire community by revitalizing a block in the Downtown that is currently vacant that has efficient access to BART.

B. That the Fourth Amendment is consistent with City's General Plan and the BART Block Specific Plan because the Amendment will allow the Developer to complete either an office use or residential use, which are both permitted uses under the City's General Plan and BART Block Specific Plan.

Section 3. CEQA. The City Council hereby finds and determines, that the Fourth Amendment does not fall within the definition of a "project" under the California Environmental Quality Act, for the following reasons: (1) it expressly requires CEQA compliance in connection with the City's consideration of the ultimate project proposal; (2) it does not commit the City to a definite course of action; (3) it does not grant any vested rights to develop; and (4) the City must still consider, and may still require, all feasible mitigation measures and alternatives, including the 'no project' alternative. Therefore, because full CEQA review will occur once a development application is submitted to the City, no CEQA review is required at this time.

Section 4 . Recordation. Pursuant to Government Code Section 65868.5, within ten (10) days following the execution of the Amendment, the City Clerk shall record with the County of Contra Costa Recorder a copy of the Amendment.

Section 5. Effective Date. Upon adoption of this Ordinance and following the effective date of this Ordinance, the Fourth Amendment to the Development Agreement shall become effective prior to the expiration of the Development Agreement.

Section 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 7. Publication. The City Clerk shall either (a) have this ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on April 14, 2008, and was adopted and ordered published at a meeting of the City Council held on April 28, 2008 by the following vote:

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting of said Council on April 28, 2008, by the following vote:

AYES: Anderson, Tatzin, Andersson, Anduri and Federighi
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Mike Anderson, Mayor

EXHIBIT "A"

FOURTH AMENDMENT TO THE DEVELOPMENT AGREEMENT

[Attached behind this page]